

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PHARMASTEM THERAPEUTICS, INC., a
Delaware corporation,

Plaintiff,

VIACELL, INC., a Delaware corporation,
OBSTETRICAL AND GYNECOLOGICAL
ASSOCIATES, P.A., FEMPARTNERS, INC.,
a Delaware corporation and CARITAS ST.
ELIZABETH'S MEDICAL CENTER OF
BOSTON, INC., a Massachusetts Nonprofit
Corporation,

Defendant.

Civil Action No. 04-CV-11673 RWZ

**DEFENDANT VIACELL'S MOTION FOR LEAVE TO FILE SURREPLY IN
OPPOSITION TO PLAINTIFF'S MOTION FOR AN INJUNCTION**

Pursuant to Local Rule 7.1 of the Local Rules of the United States District Court for the District of Massachusetts, defendant ViaCell, Inc. ("ViaCell") moves this Court for leave to file the accompanying surreply memorandum to respond to arguments raised by the "Plaintiff's Reply Memorandum in Support of its Motion for an Injunction" dated November 22, 2004 ("Reply"). As grounds for this motion, ViaCell states as follows:

In its Reply, plaintiff PharmaStem Therapeutics, Inc. ("PharmaStem") makes various legal and factual arguments that were not contained in PharmaStem's original motion and which require a response. In particular, PharmaStem's reply is the first time that PharmaStem addresses the *Mercoid* line of cases concerning antitrust counterclaims, which is at the core of the legal issue before the Court. ViaCell's proposed surreply addresses PharmaStem's *Mercoid* arguments and other new issues in the reply. ViaCell believes that its surreply will aid the Court in ruling on the motion for an injunction.

Respectfully submitted,

VIACELL, INC.,

By its attorneys,

/s/ Paul F. Ware, Jr.

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